DOCUMENT RESUME

ED 171 223 HE 011 316

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TITLE The Impact of Collective Bargaining on Governance. PERS Information Bulletin, Volume 2, No. 1, January-February 1979.
INSTITUTION City Univ. of New York, N.Y. Bernard Baruch Coll. National Center for the Study of Collective Bargaining in Higher Education.
PUB DATE Feb 79
NOTE 6p.

EDRS PRICE MF01 Plus Postage. PC Not Available from EDRS.
DESCRIPTORS *Collective Bargaining; *College Faculty; *College Governing Councils; Court Cases; Faculty Organizations; *Governance; Higher Education; Negotiation Agreements; Teacher Participation; Teacher Role; *Unions
IDENTIFIERS California; *Faculty College Relationship; Yeshiva University NY

ABSTRACT

The present status of collective bargaining at colleges and universities and the effect on governance are discussed. Five major authority patterns have been found in higher education. The advent of collective bargaining has resulted in a thorough reexamination of the issue of governance. As of January 1979, over 350 colleges and universities had organized, with more than 300 collective bargaining agreements in effect. The characteristics of academic senates, the traditional vehicle for self governance as distinct from collective bargaining modes, are described. Disagreement exists within higher education on who should have governance responsibility. A lawsuit at Yeshiva University concerning governance and a new California law that is likely to strengthen shared governance models are addressed. It is concluded that dual governance models, those in which collective bargaining and academic senates can evolve into a sharing of faculty responsibility, appear likely to continue. No evidence exists that academic senates are being replaced on campus by collective bargaining. Instead, faculty roles are being redefined with authority being redistributed. The unions' presence on the organized campus has served to clarify the definition, structure, and overall role of governance in higher education today. (SW)

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ED171223

PERS

January-February 1979
VOLUME 2, NO. 1

INFORMATION BULLETIN PUBLIC EMPLOYMENT RELATIONS SERVICES

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THE IMPACT OF COLLECTIVE BARGAINING ON GOVERNANCE

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The community of self governing scholars has long been a cherished tradition in higher education. Academicians, meeting in democratic settings to make those decisions that only they can best make — namely, direction and management of university policy. This has been the customary governance pattern of our nation's campuses.

Collegiality along with elitism that excludes all except tenure track teaching faculty, are two elements of traditional self governance that only those within the system can truly understand.

Because no monolithic model of governance prevails, five major authority patterns identified in the 1967 American Association for Higher Education study are characteristic of governance patterns found in higher education:

(a) administrative dominance - unilateral decision making
(b) administrative primacy - faculty consultation
(c) shared authority - partnership role
(d) faculty primacy - administrative consultation
(e) faculty dominance - unilateral decision making (not found anywhere in AAHE study)

These models of governance remained virtually unchallenged for decades as colleges and universities remained outside of the collective bargaining labor relations model. However, with the arrival and development of the unionized campus, the issue of governance and the impact that collective bargaining has had upon it has undergone a thorough reexamination.

350 Institutions Organized

The National Center for the Study of Collective Bargaining in Higher Education, an independent organization operating at Baruch College, City University of New York, has compiled statistics disclosing that as of January 1979 over three hundred and fifty institutions of higher education covering some 600 campuses are organized with more than 300 collective bargaining agreements being in effect today. Thirty-nine states have varying degrees of enabling legislation, and of those twenty-four states specifically grant public employees collective bargaining rights in higher education. With the passage of a new law in California, due to take effect July 1, 1979, it is expected that the number of organized campuses within the University of California and California State University System will significantly increase.

Private colleges have come under the umbrella of the National Labor Relations Board (See Syracuse and Cornell University Cases, 183 NLRB, No. 41, (1970)), and while their growth has not been as widespread as in the public institutions, it has been significant. For a complete listing of organized campuses, bargaining agents and other relevant data see the *NCSCBHE Directory of Faculty Contracts and Bargaining Agents in Institutions of Higher Education*, compiled annually by Molly Garfin.

Governance - Bargaining Coexistence

The issue of coexistence between governance models identified in the AAHE study and collective bargaining has been an area of concern for both scholars and practitioners. Those opposed to traditional academic models claim that collective bargaining has all but usurped governance. They assert that authority can only be shared by equals, and that such equality can be obtained only across the bargaining table. Those opposed to collective bargaining argue that the industrial trade union model will eventually destroy *academe* as we have known it.

Neither position takes into account what actually has transpired during the last decade, the time period in which the unionized campus has experienced its greatest period of growth.

From the vantage point of NCSCBHE, it appears that governance patterns in higher education have not been drastically altered or destroyed by the presence of collective bargaining on the campus. On the contrary, we submit that the institution of self governance has been strengthened by the presence of the union on the campus. A description of the traditional governance models, the growth of collective bargaining on the campus, as well as the legal framework must be grasped.

The characteristics of academic senates, the traditional vehicle for self governance are distinct from collective bargaining modes. Frequently senates embrace a constituency more diverse than just the bargaining unit, (e.g. administrators, counselors, librarians and students). Secondly, adademic senates do not have a nationwide affiliation found in collective bargaining models. In addition, they are dependent upon college adminstrations for funding and operating support. Finally, and perhaps most significant of all is the fact that in 1967, the AAHE study indicated that 75% of senates were either "administration dominated" or "administration primacy" models while only 25% were considered "shared authority" models. Thus, while senates are a vehicle for sharing authority, it appears that the above stated problems are often responsible for generating campus unionization.

This is not to suggest that all senates are handmaidens of the administration. Indeed at the Ivy League institutions, as well as at other prestigious institutions, collective bargaining has not gained acceptance. In

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many instances, collective bargaining has been rejected at the ballot box by faculties as either an alternative or complementary form of governance. In these cases, the arguments offered indicate that the power of a strong academic senate is far greater than collective bargaining would offer and subject to less legal restrictions. In addition, economic matters are negotiated on an individual basis . . . thus alleviating the need for bargaining collectively.

A review of the literature in the field indicates that in those cases where senates have been long established and are perceived as powerful, then the likelihood of a union on campus is diminished. It is at the newer institutions and especially at the two-year colleges that senates have given way to a dual structure with a delineation of responsibility. The union bargains for economic matters: working conditions, procedural rights and grievance procedures, while senates concern themselves with the more traditional role of governance: curriculum, promotion, grading policies and standards, and other academic matters.

Baldridge and Kemerer, writing in *The Journal of Higher Education*, Vol. XLVII, No. 4, 1976 identify two models that develop when collective bargaining enters a campus. They discuss the varieties of "union accommodation" and "union opposition" models. Neither model is an absolute for all campuses due to the diversity of the elements found in the decision making process in the higher education community. However, they conclude by stating that" . . . the future viability or failure of senates will be determined by the faculty themselves. Demands of teaching and research . . . preclude prolonged active participation by many junior faculty in campus governance. Many tenured faculty find more satisfaction in their professional activities than in campus politics . . ."

While Baldridge and Kemerer see the possibility of a dual governance model developing on the campus, they warn that both models can collapse if the faculty fall prey to the apathy model.

> If faculty do not become involved in both senate and union affairs, the ominous predictions about the demise of faculty governance may come true. Combined with other factors undermining dual track governance, faculty apathy can strike the final blow to traditional academic governance. p. 410.

The Jeffersonian observation that people receive the type of government that they deserve is appropriate here in that faculty input will be measured by the type of governance model that is developed over the long run.

Barbara Lee, in a paper which studied the governance models in four-year institutions, presented to the American Education Research Association, March 1978 cites several studies (including Baldridge and Kemerer). While acknowledging the complexities and variables inherent in the study, she states that:

> Faculty as a whole gained formal gover- power through the union contract. Even on campuses where faculty had enjoyed considerable decision making power, the contract legitimated and, in many cases, broadened the scope of the faculty's governance roll . . . p. 26.

While the samples used in the Lee study were limited, they were however representative of both private and public institutions. The view that traditional governance can be enhanced by the bargaining process and the need not be viewed as the death of the community of self governing scholars is again demonstrated.

In addition to faculty gains through unionization of the campus, the Lee study concluded that senior management also strengthened their authority, albeit at the expense of middle managment.

> . . . Administrators at the vice-presidential and presidential level acquired greater authority over formal decisions, many of which had been made by deans and 'rubber-stamped' by administrators at higher levels. Contracts now stipulated decision reponsibility and accountability at levels above the dean . . .

This development is somewhat analogous to the dilemma faced by middle managment in most public sector agencies. It has been found that as a result of the bargaining process the union is dealing directly with top managment, either at the table or through an "end run" process at the expense of middle management.

Who Should Have Responsibility?

Not all of the literature surveyed indicates support for a dual governance structure. Indeed, there are those who claim that authority in the university setting rests with managment and should not be treated on a shared basis. Donald H. Wollett, former Director of Employee Relations of the State of New York, speaking at the Fifth Annual Conference of NCSCBHE in 1975, argued that collective bargaining and governance conflict with each other. He cites examples demonstrating that college faculties seek to manage and that by their very actions they ". . . tend to blur the principle of mutually exclusive spheres of management and employee legitimacy." p. 31. Wollett states:

> . . . Decision making by employees violates another principle of sound management, that is, the precept that those who make managerial decisions are accountable therefor to consumers and capital sources. In a governance system there is no effective mechanism whereby the faculty can be brought to account for its actions . . .

He submits that governance exists ". . . at the sufferance of academic management which 'shares' its authority to manage but reserves the right to veto or ignore particular faculty decisions or to terminate the sharing arrangement." p. 32. Wollett, now a Professor at the University of California at Davis, advances the argument that in personnel areas consultive governance models are unworkable. ". . . No sensible managment is going to relinquish its authority over such matters and no sensible union is going to seek responsibility for such managment decisions." p. 33. In conclusion, he questions whether this elite group of tenure track faculty can truly govern. Assuming *arguendo* that they might be able to, then the economic cost consequences are such as to make governance systems unproductive.

Robert Nielson, Director of Colleges and Universities Department of the AFT, speaking at the same NCSCBHE

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Conference raises some additional questions. He argues that whatever model is finally utilized for the vehicle of governance, the faculty:

> . . . will exercise its managment rights and responsibilities and as a result will be on 'both sides of the table' . . . the faculty union is simply another vehicle for expressing the individual and collective desires of the faculty . . . p.25

Nielsen argues that unions are on campus because the senates were unable to continue to perform their role under the "strains and stresses inherent in a modern university." With respect to the future of governance and the collective bargaining model, he concludes that in reality governance is now negotiated along with other terms and conditions of employment and that is a credit to the genius of the system.

Yeshiva University Issue

The problem of governance in private universities was addressed by the United States Court of Appeals for the Second Circuit in *National Labor Relations Board v. Yeshiva University*, 98 LRRM 3245, July 31, 1978. The faculty of Yeshiva University, a private university in New York City, had organized themselves into a Faculty Association and sought to enter into a collective bargaining agreement with the university.

The university refused to recognize the right of the association to bargain, claiming that the faculty were excluded from coverage of the National Labor Relations Act and in reality were both supervisory and management personnel.

The NLRB issued an order to Yeshiva to commence bargaining with the duly certified faculty association. The university refused to implement the order, thus promoting the NLRB to seek a petition for enforcement.

In upholding the position of the university over the NLRB, Justice Mulligan, writing for the Court held that the faculty governance structure was such that the faculty ". . . are in effect, substantially and pervasively operating the enterprise." (At 3254).

Mulligan, the former Dean of Fordham University Law School, stressed:

> . . . our function is not to examine *in vacuo* the governance procedures of all four-year private institutions of learning described in the briefs of the *amici* universities as "mature" institutions of higher education. Many such institutions have apparently adopted a collegial decision making process in which the faculty plays a decisive role in the development of institutional policy. Given the great diversity in governance structure and allocation of power at such universities, it is appropriate to address ourselves solely to the situation at the institution involved at this proceeding. (At 3253. See *NLRB v. Wentworth Institute*, 515 F.2d550.556 (1975).

As faculties participate in shared authority in governing the campus, the *Yeshiva* case attempts to determine at what point the interests of the faculty differ from that of the university.

The faculty at Yeshiva

> has initiated, and the administration has repeatedly accepted, major policy determinations which constitute the essence of the University's educational venture. We cannot now conclude that the full-time faculty acted in its own interest . . . Whether the degree of control exercised by faculty and the forebearance of the administrators is salutary fiscally and academically is not the issue here. In fact it does exist . . . (At 3257).

The Court frequently mentions those areas over which the faculty exercises extensive control. Included are ". . . what courses are taught . . . who teaches them . . . teaching hours required . . . rank salary and tenure status . . . curriculum, admissions and graduation requirements, tuition, and in one instance, even the situs a school . . . " (At 3254) The Court concludes:

> . . . when faculty members have such power as the record indicates they do at Yeshiva, they no longer are simply exercising individual professional expertise. They are, in effect, substantially and pervasively operating the enterprise . (At 3245).

The arguments of the NLRB with regard to the collective action of the faculty were not persuasive to the Court. The Board argued that:

> . . . since the faculty's supervisory and managerial functions are exercised 'on a collective basis' rather than by individual faculty members, they must be denied status as supervisory or managerial personnel . . . (At 3254).

Yeshiva was received with a great deal of apprehension. Some private universities currently in collective bargaining or undergoing unit representation proceedings have raised the issues found in the decision as a defense in refusing to bargain. Unions, on the other hand, submit that *Yeshiva* is unique and is applicable only to that particular institution. (See 3253).

The question of an appeal has not yet been resolved as of this writing. Briefs that have been filed by the intervenor, (Yeshiva University Faculty Association), requesting that the United States Supreme Court issue a writ of *certiorari*. The Court is not expected to rule on *certiorari* until the spring of 1979. A new hearing, if ordered, would not take place then until the winter of 1979-80. Until that time the implications of *Yeshiva* will continue to be debated. (For a detailed analysis of the Yeshiva Case, See NCSCBHE *Newsletter*, Vol. 6, No. 4, 1978).

Along with *Yeshiva*, the new California law establishing collective bargaining for public insitutions of higher education has implications for governance and its relationship to the bargaining process. The California law (Section 3560 to 3599 Ch. 12 of Division 4, Title I of the *Government Code of the University of California, Hastings College of Law and the California State University and Colleges* as enacted by Ch. 744 L. 1978), effective July 1, 1979, addresses itself to the concern over governance and its role within the bargaining process.

The Act includes the following statement of policy:

> Sec. 3561. (Policy) — (a) It is the further purpose of this chapter to provide orderly and clearly defined procedures for meeting and conferring and the resolution of impasses and to define and

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prohibit certain practices which are inimical to the public interest.

(b) The Legislature recognizes that joint decision making and consultation between administration and faculty or academic employees is the long-accepted manner of governing institutions of higher learning and is essential to the performance of the educational missions of such institutions, and declares that it is the purpose of this act to both preserve and encourage that process. Nothing contained in this chapter shall be construed to restrict, limit, or prohibit the full exercise of the functions of the faculty in any shared governance mechanisms or practices, including the Academic Senate of the University of California and the divisions thereof, the Academic Senates of the California State University and Colleges, and other faculty councils, with respect to policies on academic and professional matters affecting the California State University and Colleges, the University of California, or Hastings College of the Law. The principle of peer review of appointment, promotion, retention, and tenure for academic employees shall be preserved.

(c) It is the policy of the State of California to encourage the pursuit of excellence in teaching, research, and learning through the free exchange of ideas among the faculty, students, and staff of the University of California, Hastings College of the Law, and the California State University and Colleges.

Thus by statute, the State of California recognizes that the traditional governance models have long existed within university systems and sets forth its intention to both encourage and preserve that form of governance in conjunction with the new bargaining law. The Academic Senate, the principle of peer review and academic freedom are cited in the stature as mechanisms that are to be supported. The California law supports the position of those in the higher education community who believe that governance and collective bargaining complement and perhaps, even strengthen each other, not necessarily work at cross purposes.

In conclusion, dual governance models; those in which collective bargaining and academic senates can evolve into a sharing of faculty responsibilities appears likely to continue. Although the outcome of *Yeshiva* is unclear at this time, clarification will be forthcoming. The impact of the new California law is likely to strengthen shared governance models.

No evidence exists that academic senates are being replaced on campus by collective bargaining. Instead, faculty roles are being redefined with authority being redistributed. The redistribution is likely to include the union in the overall governance of the campus with respect to those issues that are evolving into the particular domain of the labor relations mode. Individual negotiations will continue to exist at those institutions that have resisted the labor relations option.

The unions' presence on the organized campus has served to clarify the definition, structure and overall role of governance in higher education today.

National Conferees *(continued from page 1)*

has become politically popular. As a consequence the entire public sector - elected officials, management, unions and employees - has become the scape-goat for the ills of our economy and our society."

Mr. Anderson went on to say that one answer is to "stand up for public service and to demonstrate by word and deed that we are still proud to serve the public. We shouldn't apologize because we educate, because we are responsible for public safety, because we provide health care or recreation and countless other valuable public services . . . All of us must contribute to enhancing the public service. But more is required. We must stand up and fight back against irresponsible attacks, otherwise the future will be the loser by the lessening of the quality of services and the quality of life."

Thomas R. Donahue, executive assistant to the AFL-CIO president, also addressed the effects of budget cuts particularly in local governments where the decrease in employees to reduce budgets results in fewer police and fire fighters, fewer sanitation workers and larger classes for teachers. He said that "public employees are the first to go on the alter of sacrifice. Given the economic and political conservativeness of today, public employees are expected to give and give and get little or nothing in return.

"Proposition 13 follows from years of property taxes that drifted out of hand. It's not going to be corrected by slogans. Nor will it be corrected by dumping on local public employees. What we need is faith in the collective bargaining system, not suspicion. The system and the people in it have proved time and time again that they are the most efficient system we have."

Other speakers outlined other issues affecting the collective bargaining system. Howard McClennan, president of the International Association of Fire Fighters, referred to the President's request to hold wage increases to a maximum of 7 percent as likely to trigger a trend of pay boosts even lower than they have been. G.M. "Bud" Schmitt, director of labor relations for West Palm Beach, Fla., and president of the National Public Employer Labor Relations Association, described an expected increase in head-on clashes in negotiations as employees seek greater raises to keep up with cost-of-living and employers try to live within tighter budgets. He foresaw more strikes, layoffs, subcontracting, merging of jobs and one year contracts.

Among other topics discussed were sunshine bargaining, cost of living adjustments, productivity, impasse resolution procedures and arbitration, labor managment committees, strikes, and discipline and grievance handling.

Arbitration Day '79 *continued from page 1*

John T. Dunlop, Lamont University Professor, Harvard University, and former U.S. Secretary of Labor, will be the luncheon speaker. The luncheon will be chaired by Frederick R. Livingston, senior partner in the New York City law firm of Kaye, Scholer, Fierman, Hays & Handler.

For registration information contact the Department of Education and Training, the American Arbitration Association, 140 West 51st St., New York, N.Y. 10020, Telephone (212) 977-2970.